

MDL EXHIBIT 5

From: Dauphine, Dawn

Sent: Tuesday, November 20, 2007 1:33 PM

To: Haviland@HavilandLaw.com; Larry Crown; Jorge Franco

Subject: Swanston

Don, Larry, and Jorge:

As you know, on October 12, the parties stipulated to vacate the status conference and indicated that they would be filing within about 30 days a proposed stipulation to dismiss certain defendants. We have prepared the attached proposed stipulation and order for dismissal of certain defendants. Please confirm that these are acceptable and that you will be filing them with the court.

Thank you.

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

ROBERT J. SWANSTON, individually and
on behalf of himself and all others similarly
situated,

Plaintiff,

vs.

TAP PHARMACEUTICAL PRODUCTS,
INC.; et al.,

Defendants.

CV2002-004988

**STIPULATION FOR DISMISSAL
OF CERTAIN DEFENDANTS
WITHOUT PREJUDICE**

(Assigned to the Honorable Janet E.
Barton)

WHEREAS there exist overlapping claims and defendants in this case and in
In re Pharmaceutical Industry Average Wholesale Price Litigation, CA No. 01-
12257-PBS, MDL No. 1456 (D. Mass.) (“MDL NO. 1456”); and

WHEREAS to eliminate these overlapping claims and defendants, Plaintiff
Robert J. Swanston and the defendants below have agreed that Plaintiff will dismiss
without prejudice all claims against the overlapping defendants;

THEREFORE the parties agree as follows:

1 (1) the following defendants may be dismissed without prejudice:
2 Abbott Laboratories; Amgen Inc.; Zeneca, Inc.; AstraZeneca
3 Pharmaceuticals L.P.; AstraZeneca LP; Aventis Pharmaceuticals
4 Inc.; Hoechst Marion Roussel, Inc.; ZLB Behring, L.L.C. (f/k/a
5 Aventis Behring L.L.C.); Baxter International Inc.; Baxter
6 Healthcare Corporation; Bayer Corporation; Bristol-Myers
7 Squibb Co.; Oncology Therapeutics Network Corp.; Apothecon,
8 Inc.; Dey, Inc.; Fujisawa Healthcare, Inc.; Fujisawa USA, Inc.;
9 Immunex Corporation; Johnson & Johnson; Centocor, Inc.;
10 Ortho Biotech Products, L.P.; Pharmacia Corporation; Pharmacia
11 & Upjohn LLC, f/k/a Pharmacia & Upjohn, Inc.; Monsanto
12 Company; Schering-Plough Corporation; Warrick
13 Pharmaceuticals Corporation; Sicor, Inc.; Gensia, Inc., and
14 Gensia Sicor Pharmaceuticals, Inc.; and

15 (2) that subject to and specifically reserving all defenses, the parties
16 agree that (a) defendants do not waive or release any defenses or
17 arguments, including but not limited to, any statute of limitations
18 and/or repose defenses, which could have been asserted prior to
19 the effective date of the Order granting dismissal, and (b) any
20 and all applicable statutes of limitations and/or repose are, from
21 the effective date of the Order granting dismissal and for the
22 pendency of MDL 1456, tolled and the reinstatement of any
23 defendant to this action will not trigger a right of removal to
24 federal court.

1 RESPECTFULLY SUBMITTED this ____ day of November, 2007.

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4 Immunex Corporation; Johnson & Johnson; Centocor, Inc.;
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6 & Upjohn LLC, f/k/a Pharmacia & Upjohn, Inc.; Monsanto
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14 the effective date of the Order granting dismissal, and (b) any
15 and all applicable statutes of limitations and/or repose are, from
16 the effective date of the Order granting dismissal and for the
17 pendency of *In re Pharmaceutical Industry Average Wholesale*
18 *Price Litigation*, CA No. 01-12257-PBS, MDL No. 1456 (D.
19 Mass.) tolled and the reinstatement of any defendant to this
20 action will not trigger a right of removal to federal court.

21
22 DATED this _____ day of _____, 2007
23
24

25 The Honorable Janet E. Barton
26